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**Criminal accountability of United Nations officials and experts on mission**

# Criminal accountability of United Nations officials and experts on mission

## Report of the Secretary-General

*Summary*

The present report has been prepared pursuant to paragraphs 16 and 17 of General Assembly resolution 69/114. Section II contains information received from Governments on the extent to which jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, is established under their national laws. Section III provides information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Sections IV and V relate to information on activities within the Secretariat.

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# I. Introduction

1. In its resolution 69/114, the General Assembly requested the Secretary-General to report to it at its seventieth session on the implementation of the resolution, in particular with respect to paragraphs 3, 5, 8 and 9, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.

2. By a note verbale dated 21 January 2015, the Secretary-General drew the attention of all States to that resolution and requested them to submit relevant information.

3. The present report provides information on efforts undertaken in that regard. Sections II and III concern activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required under paragraphs 3 to 5, 9 and 15 of resolution 69/114. There were no comments received from States with respect to paragraph 8, by which Member States were invited to submit further comments on the report of the Group of Legal Experts (A/69/980), including on the question of future action.

4. Sections IV and V of the report relate to activities undertaken within the Secretariat in the implementation of paragraphs 6, 7 and 9 to 14 of the resolution, focusing in particular on information regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters relating thereto.

5. The present report should be read together with previous reports of the Secretary-General under this item (A/69/210, A/68/173, A/67/213, A/66/174 and Add.1, A/65/185, A/64/183 and Add.1 and A/63/260 and Add.1). Attention is also drawn to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/69/779) (see in particular paras. 56-59).

# II. Establishment of jurisdiction over crimes of a serious nature

## Croatia

6. Croatia reported that in accordance with article 14, paragraph 4, of the Croatian Criminal Act (*Official Gazette*, Nos. 125/11 and 144/12), when a Croatian citizen participates in peacekeeping operations or other international activities outside the territory of Croatia and commits in such operations or activities a criminal offence, the legislation of Croatia shall apply, unless otherwise provided for by an international treaty to which Croatia is a party. Thus, in accordance with article 14, the criminal law of Croatia shall apply to a Croatian citizen and a person who is resident in Croatia when the offence was committed outside the territory of Croatia, provided that the offence is punishable under the laws of the country in which it was committed, and that the application of the criminal legislation of Croatia is not already established on the basis of real or universal principle. Exceptionally, for certain criminal offences (e.g., rape, serious crimes against sexual freedom and some crimes of sexual exploitation and child abuse), it is not necessary

that the offence be punishable under the laws of the country in which it was committed.

## Czech Republic

7. The Czech Republic provided updated information on its previous submissions (see A/63/260, para. 14, and A/64/183, para. 9). In particular, the new Act No. 40/2009 Sb., Criminal Code, was adopted; it entered into force on 1 January 2010. The Criminal Code provides for the application of active personality jurisdiction, with the punishability of an act based on Czech national law. Accordingly, section 6 of the Criminal Code reads as follows:

> The punishability of an act committed abroad by a national of the Czech Republic or by a stateless person holding permanent residence status in the Czech Republic shall likewise be determined on the basis of the law of the Czech Republic.

8. The jurisdiction of Czech courts is further stipulated in Act No. 141/1961 Sb., Criminal Procedure Code, whose section 18(2) states:

> If the place where the act was committed cannot be determined or if the act was committed abroad, the proceedings shall be conducted by the court having jurisdiction over the district where the accused habitually resides, works or is temporarily present, if it is not possible to determine these places or they are outside the territory of the Czech Republic, the proceedings shall be conducted by the court having jurisdiction over the district where the act emerged.

## Greece

9. Greece provided complementary information to its previous submissions (see A/63/260, paras. 18-20, and A/68/173, paras. 6 and 7). Greece set out the amendments to article 8 of its Penal Code, which establishes universal jurisdiction for the crimes enumerated therein (high treason, treason against the Greek State, terrorist acts, crimes concerning military service and the obligation for conscription) providing the applicability of Greek penal laws to nationals and foreigners alike, irrespective of the laws of the country in which the act was committed, for the acts committed abroad. It further made amendments to include within their jurisdiction the following additional situations (in bold text):

> [...]
>
> (c) punishable acts committed by persons in their capacity as civil servants/officials of the Greek state **or in their capacity as officials of an organ or organization of the European Union having its seat in Greece**;
>
> (d) acts against or directed to a civil servant/official of the Greek state **or a Greek official of an organ or organization of the European Union** in the exercise of his/her duties or related to his/her duties;
>
> [...]
>
> (h) slave trade, trafficking in human beings, trafficking, child sex tourism (travel with the purpose of the commission of sexual intercourse or

other lascivious acts against minors), **rape or abuse to lascivious acts against minors, seduction of children, abuse of minors to lascivious acts constituting a felony**, child pornography, **pornographic performance of minors**, forced prostitution or sexual abuse of minors for profit **or enforced disappearance of a person**.

10. Greece indicated that, according to article 2 of the Military Penal Code, its provisions are also applicable to acts committed outside Greek territory. The Penal Code's provisions are also applicable to military crimes, unless the Military Penal Code provides otherwise.

11. Greece also noted that no penalty punishable act by Greek armed forces participating in United Nations missions has been reported so far.

## Finland[1]

12. During the reporting period, no allegations, investigations or proceedings against Finnish nationals were brought to the attention of Finland, nor were crimes of a serious nature committed by its nationals in the service of the United Nations as officials or experts on missions. Should such allegations be made, however, all appropriate measures would be taken to investigate and prosecute those crimes in accordance with applicable national law.

## Lithuania

13. Lithuania reported that its Criminal Code established jurisdiction on the basis of the principle of active nationality, in which citizens as well as permanent residents of Lithuania are criminally liable under the Criminal Code for crimes committed abroad. The Criminal Code also establishes universal jurisdiction under international treaties for certain crimes, such as crimes against humanity and war crimes, trafficking in human beings, money laundering, terrorist activity and several others, regardless of the citizenship and place of residence of the perpetrator or the territory in which the crime has been committed. Lithuania's jurisdiction, therefore, covers those performing the functions of United Nations officials or experts on missions for crimes committed abroad.

14. Lithuania also stated that no allegations against United Nations officials or experts on mission having Lithuanian citizenship have been brought to its attention pursuant to paragraph 9 of resolution 69/114. It further indicated that, should such allegations be brought, Lithuanian legislation provides for their investigation by established national, territorial and universal jurisdiction and procedures that enable the effective conduct of and assistance to criminal investigations and criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission.

[1] See also A/63/260, para. 16, A/64/183/Add.1, paras. 1-4, A/65/185, para. 19, and A/69/210, para. 8.

### Qatar[2]

15. Qatar included the text of articles 16 to 19 of Act No. 11 (2004), which promulgates the Penal Code; those articles cover the commission of a crime outside Qatar by nationals and foreigners. In particular, article 18 provides that any Qatari who, while abroad, commits an act considered by the Penal Code to be a felony or misdemeanour shall be punished under the provisions thereof when he returns to Qatar, even if the act is punishable under the law of the country in which the offence was committed. Moreover, by the terms of article 19, no criminal case shall be brought against a person who has been finally acquitted by foreign courts of a crime committed abroad or convicted thereof and has served his sentence, or whose case has lapsed or been barred by time. However, if a person is acquitted of any of the offences stipulated in article 16, paragraph 3, of the Penal Code (crimes committed outside Qatar directed against the external or internal security of the State, or crimes relating to the falsification or forging of official documents or Government seals, marks or stamps, or the falsification, forging or counterfeiting of any currency note or coin used as legal tender in Qatar or the possession or distribution of falsified, forged or counterfeit currencies) on the grounds that it is not an offence under the law of the country in which the crime was committed, a criminal case may be brought before the courts of Qatar.

16. Qatar noted that it participates in the United Nations Interim Force in Lebanon and that no offences or crimes by Qataris working in that force had been recorded.

## III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

### Croatia

17. Croatia indicated that international legal assistance in Croatia is based on bilateral and multilateral agreements on legal assistance and, where there is no international agreement, on the basis of national legislation (specifically article 4 of the Act on International Assistance in Criminal Matters (*Official Gazette*, No. 178/04)).

18. Concerning the protection of victims, Croatia set out relevant parts of its Criminal Procedure Code relating to the special regard for victims of crimes and their rights in the proceedings, and highlighted the special protection given to such specific categories of victims as children, victims of crimes against sexual freedom and victims of crimes of human trafficking.

### Czech Republic

19. The Czech Republic provided updated information from its previous submissions (see A/63/260, para. 42, and A/64/183, paras. 41-45). It indicated that it

[2] See also A/63/260, para. 30, A/64/183, para. 23, A/65/185, para. 35, A/66/174, para. 16, and A/68/173, para. 11.

is a party to many multilateral conventions and bilateral agreements concerning assistance in criminal matters.

20. Moreover, international cooperation is covered by Act No. 104/2013 Sb., on international judicial cooperation in criminal matters, which entered into force on 1 January 2014. The Act is more detailed than the previous Criminal Procedure Code. It sets forth, for example, that in case of the absence of a relevant treaty, the Ministry of Justice of the Czech Republic may accept or provide a guarantee of reciprocity for international cooperation only after reaching agreement with the Ministry of Foreign Affairs.

21. The Czech Republic also stated that the provision of information is governed by section 6 of Act No. 104/2013 Sb., on international judicial cooperation in criminal matters, which refers to sections 8 (a) to (d) of the Criminal Procedure Code, describing in detail conditions under which information can be provided to host States, including the need to avoid jeopardizing on-going investigations and the integrity of the criminal procedure processes; the protection of personal data and the privacy of minors; and the non-disclosure of information to third parties other than for stated purposes.

22. The Czech Republic also noted that the protection of victims is now set forth in Act No. 45/2013 Sb; part 1 of the Act specifically envisages specialized assistance to the victims of crimes.

## Lithuania

23. Lithuania noted that its national legislation and relevant bilateral and multilateral international treaties provide for effective cooperation in affording assistance in relation to criminal investigations and criminal or extradition proceedings, including assistance in obtaining evidence and responding adequately to requests by host States for support and assistance in order to conduct effective investigations in respect of crimes of a serious nature allegedly committed by United Nations officials or experts on mission.

24. Lithuania has also adopted appropriate legislation, including in particular the Law on the protection against criminal influence, in order to provide the effective protection of witnesses and victims of crimes committed by, inter alia, United Nations officials or experts on mission. People affected may also benefit from appropriate aid programmes and seek effective remedy for damages sustained under the general provisions of the Criminal Code, the Code of the Criminal Procedure and other applicable national legislation.

## Qatar[3]

25. Qatar provided relevant texts of articles 407 to 424 of Act No. 33 (2004), promulgating the Code of Criminal Procedure; those articles provide detailed procedures for international cooperation with regard to the extradition of convicted people and suspects and the surrender of items. In general terms, without prejudice to the provisions of international conventions in force in Qatar and on condition of

[3] See also A/63/260, para. 53, A/65/185, para. 76, A/66/174, para. 51, and A/68/173, para. 14.

reciprocity, Qatari judicial bodies shall cooperate with foreign and international judicial bodies in the criminal sphere, in accordance with the law.

# IV. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters relating thereto

26. In paragraphs 9 to 14, 16 and 17 of its resolution 69/114, the General Assembly urged Member States to provide information to the Secretary-General, requested the Secretary-General to provide certain information to States and to report to the Assembly and requested the United Nations to take certain measures concerning the issue of criminal accountability of officials and experts on mission.

## Referrals in relation to officials or experts on mission

27. The request in paragraph 9 of the resolution is similar to those made by the Assembly in paragraph 9 of its resolutions 68/105 (see A/69/210, covering 2013/14), 67/88 (see A/68/173, covering 2012/13), 66/93 (see A/67/213, covering 2011/12), 65/20 (see A/66/174 and Add.1, covering 2010/11), 64/110 (see A/65/185, covering 2009/10), 63/119 (see A/64/183 and Add.1, covering 2008/09) and 62/63 (see A/63/260 and Add.1, covering 2007/08).

28. The information provided in the present report relates to the period from 1 July 2014 to 30 June 2015. During that period, and with reference to the request in paragraph 17 of the resolution, the Office of Legal Affairs referred to States of nationality, through the Permanent Missions concerned, the cases of 22 United Nations officials and experts on mission for investigation and possible prosecution. Of those cases, the first concerned allegations of procurement fraud and the abuse of authority; the second, allegations of fraud and the abuse of authority; the third and fourth, allegations of attempted embezzlement; the fifth, allegations of fraud and forgery; the sixth and seventh, allegations of embezzlement; the eighth to twelfth, allegations of medical insurance fraud; the thirteenth, allegations of a fraudulent education grant claim; the fourteenth, allegations of the sexual abuse of a minor; the fifteenth, allegations of embezzlement; the sixteenth, allegations of fraudulent salary disbursements; the seventeenth, allegations of medical insurance fraud; the eighteenth and nineteenth, allegations of the misuse of information and communications technology resources; the twentieth, allegations of fraud and embezzlement; the twenty-first, allegations of sexual exploitation and the abuse of a minor; and the twenty-second, allegations of fraud and embezzlement.

## Requests for indication of status and assistance that may be provided by the Secretariat

29. The Office of Legal Affairs requested the States to which cases were referred during the reporting period to keep the United Nations informed of any action taken by national authorities in relation to such cases. As at the date of preparation of the present report, the Office has been contacted by States to which referrals were made

with respect to the cases of 10 officials or experts on mission, noting that such cases had been raised with the relevant authorities. In four of those cases, the State concerned has also requested specific assistance from the United Nations. The Secretariat remains ready to assist on all referrals made. Responses to requests by the Secretariat for information from States of nationality on cases previously referred to them are contained within the reports of the Secretary-General on criminal accountability of United Nations officials and experts on mission for the corresponding periods.

30. Details of earlier requests by the Secretariat for information from States as to how they were handling cases previously referred to them are contained within the previous reports of the Secretary-General on the subject (see A/64/183, para. 63, A/65/185, paras. 85 and 86, A/66/174, paras. 62 and 63, A/67/213, paras. 36 and 37, A/68/173, paras. 19 and 20, and A/69/210, paras. 15 and 16).

## Possible use by States exercising jurisdiction of information from United Nations investigations

31. In paragraph 11 of its resolution 69/114, the General Assembly requested the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. In the same vein, in paragraph 13 of that resolution, the Assembly urged the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States.

32. In that regard, it is important to recall that the legal framework within which the referrals are made by the United Nations and the role of the Secretary-General have been outlined in the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission (A/63/260, sect. IV).

33. The United Nations cooperates with law enforcement and the judicial authorities of relevant Member States in accordance with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, as well as other relevant international agreements and applicable legal principles. Accordingly, the Organization will disclose documents and/or information and, on a case-by-case basis, immunity will be waived by the Secretary-General where immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Consequently, information obtained by the United Nations may be provided to the relevant authorities and documents may be shared, subject to consideration of confidentiality and privileges and immunities. Documents may be redacted where necessary. It should be noted that, since the United Nations does not have any criminal investigative or prosecutorial jurisdiction, the use of any information or documents provided by the United Nations, including their admissibility in any legal proceedings, is a matter for determination by the relevant judicial authorities to whom such information or documents have been provided.

### Protection of United Nations officials and experts on mission from retaliation

34. In paragraph 12 of its resolution 69/114, the General Assembly encouraged the United Nations, when allegations against United Nations officials or experts on mission are determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and the reputation of such officials and experts on mission. Moreover, the Assembly, in paragraph 14 of the same resolution, emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission.

35. In that regard, United Nations officials who report misconduct by other United Nations officials or experts on mission are protected against retaliation under the staff regulations, rules and relevant administrative issuances. In particular, the Secretary-General issued bulletin ST/SGB/2005/21, entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations", which was established to protect individuals who report misconduct or cooperate with duly authorized audits or investigations. In addition, it should be noted that staff members may appeal against any retaliatory measure through the internal justice system.

## V. Other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

36. With support from conduct and discipline personnel, all United Nations personnel deployed in peacekeeping and special political missions continue to receive training, including awareness-raising, concerning their obligation to respect the United Nations standards of conduct, including the obligation for all United Nations personnel to observe the laws of the host State, and also concerning possible consequences, in terms of accountability, should United Nations personnel fail to observe such laws.

37. The accountability framework discussed in the previous report of the Secretary-General (A/69/210) was implemented in July 2014 and, since that time, peacekeeping missions have been reporting, on a quarterly basis, on cooperation with host States regarding the investigation and prosecution of criminal offences involving the United Nations or its personnel as victims, or when such offences are committed by United Nations personnel, where applicable.